

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RANDY CHARLTON,)	CASE NO. 1:07 CV 35
)	
Petitioner,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
MAGGIE BEIGHTLER, WARDEN,)	Magistrate Judge Limbert
)	
Respondent.)	<u>MEMORANDUM OPINION</u>

This matter comes before the Court upon the Joint Motion to Dismiss Habeas Corpus Proceedings as Moot (Docket #20) filed on December 10, 2007.

On November 13, 2007, Magistrate Judge George J. Limbert issued a Report and Recommendation, recommending that this Court grant Mr. Charlton's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Docket #1) and remand the case to the Ohio Court of Common Pleas for resentencing in light of *Blakely v. Washington*, 542 U.S. 269 (2004) and *State v. Foster*, 845 N.E.2d 470 (Ohio 2006). Mr. Charlton had been sentenced to 10 years on a Major Drug Offender specification based upon facts not found by a jury. The Magistrate Judge found that "when the trial court imposed a 10-year sentence enhancement pursuant to O.R.C. § 2929.14(D)(2)(b), it violated Petitioner's Sixth Amendment right to trial by jury." (Report and Recommendation at p. 26.) Given that Mr. Charlton was not otherwise barred from

raising his claim, the Magistrate Judge recommended that the case be remanded and Mr. Charlton be resentenced.

On November 28, 2007, Respondent filed Objections to the Magistrate Judge's Report and Recommendation (Docket #19). Respondent requested that this Court decline to adopt the Report and Recommendation of the Magistrate Judge. Respondent stated that on October 26, 2007, unbeknownst to the Magistrate Judge, Counsel for Petitioner, and Federal habeas Counsel for Respondent, Mr. Charlton was resentenced in accordance with *Foster* and did not receive the additional sentence for the Major Drug Offender specification. Further, Respondent discussed that neither the State nor Mr. Charlton appealed his new sentence and that the appeal time had expired. Therefore, Respondent asserted that the Federal habeas corpus petition filed with this Court is moot because the underlying constitutional issue no longer exists given that Mr. Charlton has already been resentenced and the sentence Mr. Charlton contests no longer exists.

On December 10, 2007, the Parties to this Case filed a Joint Motion to Dismiss Habeas Corpus Proceedings as Moot (Docket #20). In light of Mr. Charlton's resentencing, the Parties agree that the issues raised in the Petition are moot.

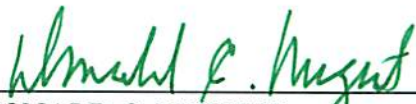
Conclusion

Based on the foregoing, the Joint Motion to Dismiss Habeas Corpus Proceedings as Moot (Docket #20) filed by the Parties is hereby GRANTED. Mr. Charlton's Petition for Writ of Habeas Corpus (Docket #1) is hereby DISMISSED as it is MOOT. This case is hereby terminated.

Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate

of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b).

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: December 14, 2007